

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

ARMANDO HERNANDEZ,

Plaintiff,

-against-

ANSWER

08 Civ. 4525 (ADS)

VILLAGE OF PLEASANTVILLE,

Defendants.

----- X

Defendant, by and through it's attorneys, Bond, Schoeneck & King, PLLC, hereby appears and answers the Complaint as follows:

1. Denies the truth of the allegations set forth in Paragraph 1 of the Complaint, except admits that Plaintiff purports to bring this action pursuant to the Family and Medical Leave Act and that this court has jurisdiction over actions properly brought under that statute.
2. Admits upon information and belief the truth of the allegations set forth in Paragraph 2 of the Complaint.
3. Admits the truth of the allegations set forth in Paragraph 3 of the Complaint.
4. Denies the truth of the allegations set forth in Paragraph 4 of the Complaint, except admits that Plaintiff was employed by the Village of Pleasantville for more than 12 months.
5. Denies the truth of the allegations set forth in Paragraph 5 of the Complaint, except admits that Plaintiff was an employee of the Village of Pleasantville, and alleges affirmatively that Plaintiff began working for the Village on or about February 20, 2007, and that Plaintiff's performance was unsatisfactory.

6. Denies the truth of the allegations set forth in Paragraph 6 of the Complaint, except admits that Plaintiff failed to complete his scheduled shift on or about February 20, 2008.

7. Denies the truth of the allegations set forth in Paragraph 7 of the Complaint, and alleges affirmatively that by letter dated April 14, 2008 Plaintiff was provided notice that he was being terminated and that Plaintiff's termination became effective April 25, 2008.

8. Admits the truth of the allegations set forth in Paragraph 8 of the Complaint.

9. Denies the truth of the allegations set forth in Paragraph 9 of the Complaint.

10. Denies the truth of the allegations set forth in Paragraph 10 of the Complaint, except admits that on or about February 20, 2008 Plaintiff was injured on the job and that thereafter was absent from work until the effective date of his termination on April 25, 2008.

11. Denies the truth of the allegations set forth in Paragraph 11 of the Complaint.

12. Denies the truth of the allegations set forth in Paragraph 12 of the Complaint.

13. Admits that Plaintiff purports to demand a jury trial as set forth in Paragraph 13 of the Complaint, except denies that the Complaint states a claim upon which relief can be granted.

14. Denies the truth of the allegations set forth in Paragraph 14 of the Complaint, except alleges affirmatively that Plaintiff's termination became effective April 25, 2008, and that his termination was a result of an unsatisfactory work performance.

15. Denies the truth of the allegations set forth in Paragraph 15 of the Complaint.

16. Denies the truth of the allegations set forth in Paragraph 16 of the Complaint.

17. Denies the truth of the allegations set forth in Paragraph 17 of the Complaint.

FIRST DEFENSE

18. The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

19. Plaintiff did not qualify as having a “serious medical” condition, as required by the Family and Medical Leave Act.

THIRD DEFENSE

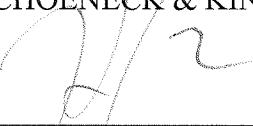
20. The Village of Pleasantville had a legitimate non-discriminatory business reason, wholly unrelated to Plaintiff’s exercise of his FMLA rights, for terminating his employment.

WHEREFORE, Defendant requests that judgment be rendered against Plaintiff dismissing this action in its entirety as against it and awarding it costs, disbursements and such other and further relief as the Court deems to be appropriate.

Dated: Garden City, New York
July 22, 2008

Respectfully submitted,

BOND, SCHOENECK & KING, PLLC

By: 

Howard M. Miller (HM 4538)
Attorneys for the Defendant
1399 Franklin Avenue, Suite 200
Garden City, New York 11530
(516) 267-6300

CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2008 the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

Robert Goodstein
56 Harrison Street, Suite 401
New Rochelle, New York 10801



Howard M. Miller (HMM: 4538)
Bond, Schoeneck & King, PLLC
Attorneys for Defendants
1399 Franklin Avenue, Suite 200
Garden City, New York 11530
(516) 267-6318